



Signed and Filed: June 5, 2017

A handwritten signature in black ink, appearing to read "Hannah L. Blumenstiel".

HANNAH L. BLUMENSTIEL
U.S. Bankruptcy Judge
UNITED STATES BANKRUPTCY COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

In re:)	Case No. 15-31548 HLB
)	
WAYNE WING CHEUNG WONG,)	Chapter 7
)	
Debtor.)	
)	
TRICO PIPES, et al.,)	
)	Adv. Proc. No. 16-3002 HLB
Plaintiffs,)	
v.)	
)	
WAYNE WING CHEUNG WONG,)	
)	
Defendant.)	

MEMORANDUM DECISION

I. INTRODUCTION

This matter comes before the court on the complaint of Plaintiffs TRICO Pipes (a labor-management cooperation committee established pursuant to 29 U.S.C. § 175a) and Aram Hodess (a trustee of TRICO Pipes). The complaint seeks to have a state court judgment against Defendant Wayne Wong and in favor of TRICO Pipes and Mr. Hodess declared nondischargeable under 11 U.S.C. §§ 523(a)(2)(A) and (a)(6).¹

¹ Unless otherwise noted, all statutory citations shall refer to Title 11 of the United States Code, aka the "Bankruptcy Code," and any references to rules shall refer to the Federal Rules of Bankruptcy Procedure.

1 After the court granted partial summary judgment in favor
2 of TRICO Pipes and Mr. Hodess, the parties stipulated to a
3 trial on declarations. The parties timely filed their trial
4 briefs. This memorandum decision constitutes the court's
5 findings of facts and conclusions of law as required by Federal
6 Rule of Civil Procedure 52, as made applicable to this
7 adversary proceeding by Rule 7052.

8 **II. JURISDICTION**

9 The court has jurisdiction over this action pursuant to 28
10 U.S.C. § 1334, 28 U.S.C. § 157(a), and General Order 24 of the
11 United States District Court for the Northern District of
12 California. This is a core proceeding within the meaning of 28
13 U.S.C. § 157(b)(2)(I). Venue is proper under 28 U.S.C.
14 § 1409(a).

15 **III. BACKGROUND**

16 **a. Pre-petition litigation**

17 Mr. Wong, along with third parties Jianxin Jack Wang and
18 XinRui Lisa Li, operated several companies that provided plumbing
19 services for public works projects: Big Bears Construction
20 Limited Partnership, Big Bears Construction General Partnership,
21 Big Bears Construction Limited Liability Company, and Duke's
22 Construction (the "Big Bears Entities"). In April 2011, TRICO
23 Pipes and Mr. Hodess filed a state court lawsuit against Mr.
24 Wong, Mr. Wang, Ms. Li, the Big Bears Entities, and others. The
25 operative state court complaint primarily alleged that the Big
26 Bears Entities violated California's prevailing wage law for
27 public works projects by underpaying five employees. Mr. Hodess
28 and TRICO Pipes sought relief against Mr. Wong, Mr. Wang, Ms. Li,

1 and the Big Bears Entities under multiple causes of action, which
2 were enumerated in the operative state court complaint as:

- 3 • First Cause of Action for Prevailing Wage Underpayments,
4 Attorney's Fees and Costs (Cal. Lab. Code §§ 1771, 1774,
5 1776 & 1194; Cal. Bus. & Prof. Code §§ 17203 & 17204)
- 6 • Second Cause of Action for Liquidated Damages on Labor
7 Code Violations (Cal. Lab. Code § 1194.2)
- 8 • Third Cause of Action for Restitution of Prevailing
9 Wages, Attorney's Fees and Expenses (Cal. Lab. Code
10 § 1776(e))
- 11 • Fourth Cause of Action to Enjoin Prevailing Wage
12 Reporting Requirement Violations (Cal. Lab. Code § 1776
13 and Cal. Bus. & Prof. Code §§ 17203 & 17204)
- 14 • Fifth Cause of Action for Restitution Based on Prevailing
15 Wage Reporting Violations (Cal. Lab. Code § 1776 and Cal.
16 Bus. & Prof. Code §§ 17203 & 17204)
- 17 • Sixth Cause of Action for Restitution of Unpaid Wages for
18 Meal and Rest Period Violations and to Enjoy Meal and
19 Rest Period Violations (Cal. Lab. Code §§ 226.7 & 218 and
20 Cal. Bus. & Prof. Code §§ 17203 & 17204)
- 21 • Seventh Cause of Action for Damages and Injunctive Relief
22 for Failure to Provide Proper Itemized Wage Statements
23 (Cal. Lab. Code §§ 226, 226.3 & 218 and Cal. Bus. & Prof.
24 Code §§ 17203 & 17204)

25 The state court complaint further alleged that the Big Bears
26 Entities were alter egos of Mr. Wang, Mr. Wong, and Ms. Li such
27 that Mr. Wang, Mr. Wong, Ms. Li should be held jointly and
28 severally liable for any liability of the Big Bears Entities.

1 Finally, the state court complaint alleged that the Big Bears
2 Entities fraudulently transferred assets, both constructively and
3 intentionally, to Mr. Wong, Mr. Wang, and Ms. Li.

4 The state court entered the default of the Big Bears
5 Entities. All of the remaining defendants, except for Mr. Wong,
6 Mr. Wang, and Ms. Li, settled prior to trial. The state court
7 held a trial on October 21, 2014 at which only Ms. Li appeared.
8 After trial, the Court entered judgment in favor of Mr. Hodess
9 and TRICO Pipes and against Mr. Wong, Mr. Wang, and the Big Bears
10 Entities "in the amount of \$917,149.81 for unpaid wages and
11 liquidated damages and \$261,576.15 in prejudgment interest for a
12 total of \$1,178,725.96, less credit for \$913,000.00, the amount
13 paid in settlement by all the settling parties, for a net
14 judgment of \$265,725.96." The state court also awarded to Mr.
15 Hodess and TRICO Pipes costs of \$10,832.39 and attorneys' fees
16 and expenses of \$1,357,717.50.

17 **b. The summary judgment litigation**

18 The complaint seeks to have Mr. Wong's liability as
19 determined by the amended state court judgment declared
20 nondischargeable under sections 523(a)(2)(A) and (a)(6). The
21 court granted partial summary judgment as to Mr. Hodess and TRICO
22 Pipes' claim under section 523(a)(2)(A).

23 First, the court granted partial summary judgment as to the
24 nondischargeability of the amended state court judgment as it
25 related to liability arising from a fraudulent transfer. The
26 state court judgment specifically found that Mr. Wong had
27 fraudulently transferred assets to himself from the Big Bears
28 Entities with the actual intent to defraud creditors. See

1 Amended Judgment, ¶ 8 (Wong and others "fraudulently conveyed
2 assets of the Big Bears entities to themselves individually, with
3 the intent of preventing Plaintiffs from recovering the unpaid
4 wages"). Based upon the Supreme Court's decision in Husky Int'l
5 Electronics v. Ritz, 136 S. Ct. 1581 (2016), the court found that
6 liability related to the receipt of fraudulently transferred
7 property would be nondischargeable. The court could not grant
8 summary judgment as to damages, however, because the state court
9 judgment provided no indication as to the value of the
10 fraudulently transferred property. Presuming TRICO Pipes and Mr.
11 Hodess do not succeed on any of their other arguments, only the
12 liability arising from Mr. Wong's receipt of fraudulently
13 conveyed assets would be nondischargeable. Accordingly, there
14 remained a triable issue of fact as to what portion of the
15 judgment was on account of a fraudulent transfer, and more
16 specifically, the value of fraudulently transferred property.

17 Second, the court denied summary judgment as to the
18 nondischargeability of the amended state court judgment as it
19 related to liability arising from the prevailing wage claims.
20 Mr. Hodess and TRICO Pipes' complaint argued that the amended
21 judgment established nondischargeability under section
22 523(a)(2)(A) because it stated that Mr. Wong and others "engaged
23 in a pattern of conduct designed to conceal their failure to pay
24 prevailing wages as required by law and to evade paying their
25 debts to creditors based on such failure." See Amended Judgment,
26 ¶ 4. The court analyzed the factors relevant to section
27 523(a)(2)(A) and found that the amended judgment established none
28 of them. The court also found that the state court's findings

1 did not establish "actual fraud" because liability on the wage
2 claims resulted from the failure to pay prevailing wages - not
3 Mr. Wong's concealment. See Order on Motion for Summary Judgment
4 at 12 ("While he may have attempted to conceal and avoid
5 liability for these failures, at no point does the state court
6 indicate that the failure to pay prevailing wages itself occurred
7 as a result of fraud, nor is fraud a prerequisite to a finding of
8 liability under California's prevailing wage laws.").

9 Finally, the court denied summary judgment as to the section
10 523(a)(6) claim. The amended judgment contained a finding that
11 Mr. Wong's "failure to pay prevailing wages and the active
12 concealment of this conduct was intentional and malicious." This
13 court determined, however, that this finding was wholly
14 unnecessary to a determination of Mr. Wong's liability for TRICO
15 Pipes and Mr. Hodess' prevailing wage claims and not entitled to
16 preclusive effect. The court also found that application of the
17 doctrine of collateral estoppel would not comport with the public
18 policies underlying the doctrine, which is a prerequisite to its
19 application under California law.

20 Mr. Hodess and TRICO Pipes filed a motion to reconsider the
21 ruling on their motion for summary judgment. The court entered a
22 tentative ruling denying the motion, which the parties accepted.
23 As a result, the court entered an order adopting its tentative
24 ruling and denying the motion. TRICO Pipes and Mr. Hodess then
25 filed in the District Court a motion for leave to file
26 interlocutory appeals of the summary judgment ruling and the
27 denial of the motion to reconsider. The District Court denied
28

1 that motion. Thereafter, the parties agreed to a trial on their
2 written submissions.

3 **IV. LEGAL STANDARDS**

4 **a. 11 U.S.C. § 523(a)(2)(A)**

5 Section 523(a)(2)(A) excepts from discharge "any debt . . .
6 for money, property, services, or an extension, renewal, or
7 refinancing of credit, to the extent obtained by . . . false
8 pretenses, a false representation, or actual fraud, other than a
9 statement respecting the debtor's or an insider's financial
10 condition." 11 U.S.C. § 523(a)(2)(A).

11 To prevail in a section 523(a)(2)(A) action, a creditor must
12 prove five elements by preponderance of the evidence:

- 13 (1) the debtor made a representation;
- 14 (2) the debtor knew at the time the representation was
15 false;
- 16 (3) the debtor made the representation with the intention
17 and purpose of deceiving the creditor;
- 18 (4) the creditor relied on the representation; and
- 19 (5) the creditor sustained damage as the proximate result
20 of the representation.

21 Apte v. Japra, M.D., F.A.C.C., Inc. (In re Apte), 96 F.3d 1319,
22 1322 (9th Cir. 1996); In re Eashai, 87 F.3d 1082, 1087 (9th Cir.
23 1996).

24 The Supreme Court has clarified that the term "actual fraud"
25 in section 523(a)(2)(A) is a ground for nondischargeability
26 separate from false representation. While encompassing false
27 representation, actual fraud is a broader concept that includes
28 "forms of fraud, like fraudulent conveyance schemes, that can be

1 effected without a false representation." Husky, 136 S. Ct. at
2 1586. Ultimately, Husky outlines a two-part test to determine
3 nondischargeability for actual fraud under section 523(a)(2)(A):

4 "Actual fraud" has two parts: actual and fraud. The word
5 "actual" has a simple meaning in the context of common-law
6 fraud: It denotes any fraud that "involv[es] moral
7 turpitude or intentional wrong." Neal v. Clark, 95 U. S.
8 704, 709 (1878). "Actual" fraud stands in contrast to
"implied" fraud or fraud "in law," which describe acts of
deception that "may exist without the imputation of bad
faith or immorality." Ibid. Thus, anything that counts as
"fraud" and is done with wrongful intent is "actual fraud."

9 Husky, 136 S. Ct. at 1586. A fraudulent conveyance is a type of
10 fraud that, if done with wrongful intent, is actionable under
11 this test. Id.

12 **b. 11 U.S.C. § 523(a)(6)**

13 Section 523(a)(6) excepts from discharge any debt "for
14 willful and malicious injury by the debtor to another entity or
15 to the property of another entity." 11 U.S.C. § 523(a)(6). The
16 injury itself must be deliberate or intentional and not merely a
17 deliberate or intentional act that leads to injury. Kawaauhau v.
18 Geiger, 523 U.S. 57, 61-62 (1998).

19 Section 523(a)(6) requires application of a two-pronged
20 test: the creditor must prove that the debtor's conduct in
21 causing the injuries was both willful and malicious. Carillo v.
22 Su (In re Su), 290 F.3d 1140, 1146-47 (9th Cir. 2002).

23 The "willful" requirement is separate and distinct from the
24 "malicious" requirement. Barboza v. New Form, Inc. (In re
25 Barboza), 545 F.3d 702, 706 (9th Cir. 2008). To meet the willful
26 requirement, a plaintiff must demonstrate that "the debtor has a
27 subjective motive to inflict injury or [] the debtor believes
28 that injury is substantially certain to result from his own

1 conduct." Id. at 1142. The debtor must have intended the
2 consequence of the act, not just the act itself. Id. at 1146-47.

3 To meet the maliciousness requirement, a plaintiff must
4 demonstrate that "the injury involves (1) a wrongful act, (2)
5 done intentionally, (3) which necessarily causes injury, and (4)
6 is done without just cause or excuse." Id. at 1146-47 (internal
7 quotation marks and citation omitted).

8 **V. FACTUAL FINDINGS**

9 Mr. Wong is a full-time plumbing inspector for the City and
10 County of San Francisco. (Wong Decl. 2:4.) Prior to that
11 employment, Mr. Wong worked as a contractor and held several
12 licenses: a B1 general contractor's license, a C36 plumbing
13 license, a C16 fire sprinkler license, and a C20 mechanical
14 license. (Wong Decl. 2:5-6; Transcript of September 19, 2013
15 Deposition of Wayne Wing Cheung Wong ("Wong Dep. Tr.") 23:8-22.)
16 Some years prior, Mr. Wong met Jack Wang over coffee (Wong Dep.
17 Tr. 45:1-15) and they continued to know each other on a social
18 basis (Wong Decl. 2:20).

19 Sometime after they met, Mr. Wong agreed to let Mr. Wang use
20 his licenses to work on plumbing projects. (Wong Decl. 2:7-11.)
21 To do this, Mr. Wong signed and filed multiple applications with
22 the Contractor's State License Board. In these documents, Mr.
23 Wong represented that he held a 20% ownership stake in Big Bears
24 Construction LP (which later became Big Bears Construction), Big
25 Bears Construction, Inc., and Duke's Corporation. (Barber Decl.
26 Exs. 11, 12, 13, 14, 17, 18, 19, 21.) In these applications, Mr.
27 Wong represented that he would perform one or more of the
28 following duties: supervising construction, managing

1 construction activities by making technical and administrative
2 decision, checking jobs for proper workmanship, or direct
3 supervision on construction job sites. (Barber Decl. Exs. 11,
4 12, 13, 14, 17, 18, 19, 21.)

5 In reality, Mr. Wong never performed any of these duties
6 with regard to the Big Bears Entities (Wong Dep. Tr. 106:6-
7 109:16; 58:10-12; 59:16-18), had no formal business relationship
8 with Mr. Wang or the Big Bears Entities (Wong Decl. 2:12-25), and
9 had no ownership interest in the entities (Wong Dep. Tr. 58:10-
10 12). Mr. Wong was not involved with the Big Bears Entities'
11 projects (Wong Decl. 2:12-25) and never asked Mr. Wang if his
12 employees were being paid (Wong Dep. Tr. 107:24-108:1).

13 **VI. CONCLUSIONS OF LAW**

14 **a. Nondischargeability under section 523(a)(2)(A) of** 15 **fraudulent transfer liability**

16 As indicated above, after the court's ruling on TRICO Pipes
17 and Mr. Hodess' motion for summary judgement, there remained a
18 triable issue as to the amount of damages that arose specifically
19 from the fraudulent transfer of assets to Mr. Wong as found by
20 the state court's amended judgment. Under California law, this
21 liability is determined by the value of the assets transferred.
22 Cal. Civ. Code § 3439.08(b)(1). Mr. Hodess and TRICO Pipes did
23 not submit any evidence regarding the value of the fraudulently
24 transferred assets or what portion of the damages determined by
25 amended judgment relate to the transfer of such assets.

26 Accordingly, the court finds and concludes that Mr. Hodess and
27 TRICO Pipes have not met their burden on this issue and therefore
28 rules in favor of Mr. Wong.

1 **b. Nondischargeability of the prevailing wage claim**
2 **liability under 523(a)(2)(A)**

3 There also remained a triable issue as to whether Mr. Wong
4 either made a fraudulent misrepresentation or whether his conduct
5 otherwise constituted "actual fraud" as that term is understood
6 for purposes of section 523(a)(2)(A). Apart from the fraudulent
7 transfer liability discussed above, TRICO Pipes and Mr. Hodess
8 have not provided any evidence of "actual fraud" except for
9 traditional misrepresentation.

10 As stated above, to establish nondischargeability for a
11 traditional misrepresentation under section 523(a)(2)(A), TRICO
12 Pipes and Mr. Hodess must show that: (1) Mr. Wong made a false
13 representation; (2) he knew of the representation's falsity at
14 the time he made it; (3) he made the false representation with
15 the intention and purpose of deceiving a creditor; (4) the
16 creditor justifiably relied on the false representation; and (5)
17 the creditor sustained damage as a result of the false
18 representation.

19 The only misrepresentations Mr. Hodess and TRICO Pipes have
20 identified are Mr. Wong's statements on his license applications
21 that he would supervise the work of the Big Bears Entities. Mr.
22 Wong clearly knew that these statements were false. TRICO Pipes
23 and Mr. Hodess have provided no evidence, however, that the wage
24 claimants relied upon these representations or that these
25 representations proximately caused their harm. Absent such
26 evidence, the court cannot conclude that Mr. Wong's liability is
27 nondischargeable under section 523(a)(2)(A). Accordingly, the
28

1 court finds and concludes that Mr. Hodess and TRICO Pipes have
2 not met their burden and rules in favor of Mr. Wong.

3 **c. Nondischargeability of the amended judgment under**
4 **523(a)(6)**

5 Finally, there remains a triable issue of fact as to whether
6 Mr. Wong acted willfully and maliciously in causing the liability
7 determined by the state court's amended judgment. To establish
8 willfulness, Mr. Hodess and TRICO Pipes had to demonstrate that
9 Mr. Wong held the subjective motive to inflict injury or believed
10 that injury was substantially likely to result from his conduct.

11 TRICO Pipes and Mr. Hodess provided no evidence that Mr.
12 Wong intended for the employees of the Big Bears Entities to
13 receive less than prevailing wages or that he even had knowledge
14 of it. Nor did they provide evidence that Mr. Wong believed the
15 injury they suffered was substantially certain to result from his
16 conduct.

17 In their trial brief, TRICO Pipes and Mr. Wong assert that
18 "there is a strong circumstantial inference that Wong was aware
19 by December 2010, if not earlier, that Wang and Big Bears were
20 engaged in a scheme to pay their employees much less than the
21 mandated wage rates on public-works projects." (Pls' Tr. Br. at
22 14.) Unfortunately, TRICO Pipes and Mr. Hodess submitted
23 absolutely no evidence that would permit the court to draw this
24 inference. The only relevant evidence submitted includes the
25 deposition testimony of Mr. Wong and several years' worth of
26 Contractor's State License Board filings. Mr. Wong's statements
27 that he only lent his license to Mr. Wang and the Big Bears
28 Entities and had nothing to do with the operations of those

1 businesses, while not the most credible based upon his history of
2 false licensure filings, remain unrefuted. The court therefore
3 cannot draw an inference in favor of Mr. Hodess and TRICO Pipes
4 on this issue.

5 In addition, the state court's amended judgment preclusively
6 established that Mr. Wong received fraudulently conveyed assets
7 in some amount from the Big Bears Entities. Once again, however,
8 TRICO Pipes and Mr. Hodess have failed to provide evidence that
9 Mr. Wong intended a specific harm, such as the wage claimants'
10 failure to receive prevailing wages or Plaintiffs' inability to
11 collect upon the amended judgment as a result of the transfer.
12 Absent such evidence, the court cannot find that the injury
13 caused by Mr. Wong's receipt of these transfers was willful.

14 Accordingly, the court finds and concludes that Mr. Hodess
15 and TRICO Pipes have not met their burden under section 523(a)(6)
16 and therefore rules in favor of Mr. Wong.

17 **VII. CONCLUSION**

18 For the foregoing reasons, the court finds in Mr. Wong's
19 favor on all claims raised by TRICO Pipes and Mr. Hodess and
20 will enter judgment accordingly.

21 ****END OF ORDER****

Court Service List

[None]